

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #5	CCRB Case #: 201904646	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/11/2019 8:05 PM	Location of Incident: Intersection of Verit Street and Humboldt Street	Precinct: 90	18 Mo. SOL 11/11/2020	EO SOL 6/28/2021	
Date/Time CV Reported Wed, 05/29/2019 6:18 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 05/29/2019 6:18 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Cory Levy	19666	958812	PSA 3
2. POM Phillip Correale	16904	957488	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A.POM Phillip Correale	Abuse: Police Officer Phillip Correale stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Cory Levy	Abuse: Police Officer Cory Levy stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Cory Levy	Abuse: Police Officer Cory Levy interfered with § 87(2)(b) use of a recording device.	
D.POM Cory Levy	Abuse: Police Officer Cory Levy took a photograph of § 87(2)(b)	

### Case Summary

On May 29, 2019, § 87(2)(b) filed this complaint in person during a field interview for another CCRB case, on behalf of himself and his sister's boyfriend, § 87(2)(b).

On May 11, 2019, at approximately 8:05 p.m., § 87(2)(b) his wife, § 87(2)(b) his § 87(2)(b)-old daughter, § 87(2)(b) his sister, § 87(2)(b) s boyfriend, § 87(2)(b) and § 87(2)(b) s brother, § 87(2)(b) entered § 87(2)(b) s car, which was parked in front of § 87(2)(b) apartment at § 87(2)(b) in Brooklyn. Police Officer Phillip Correale and Police Officer Cory Levy—both from PSA 3 Anti-Crime—drove by as § 87(2)(b) pulled out of the parking spot. PO Correale and PO Levy pulled § 87(2)(b) s vehicle over one block away, at the intersection of Humboldt Street and Verit Street in Brooklyn (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) began video recording on his cellphone from the front passenger's seat. PO Levy continuously shined his flashlight directly at § 87(2)(b) cellphone, thereby interfering with his recording (**Allegation C: Abuse of Authority, § 87(2)(g)**). PO Correale issued § 87(2)(b) one summons for not having his driver's license with him while driving. As PO Correale and PO Levy drove away, PO Levy allegedly took a photograph of § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**).

The investigation obtained one body-worn camera (BWC) video each from PO Correale (**Board Review 01, 02**) and PO Levy (**Board Review 03, 04**), as well as one cellphone video from § 87(2)(b) (**Board Review 05, 06**). All references to video evidence in this report refer to the time-stamp in the video player itself, rather than an on-screen clock embedded in the video.

This case was sent to the Mediation Unit on May 22, 2019, and was returned for investigation on July 22, 2019, after it was no longer suitable for mediation.

### Findings and Recommendations

**Allegation A—Abuse of Authority: Police Officer Phillip Correale stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B—Abuse of Authority: Police Officer Cory Levy stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that PO Levy and PO Correale stopped § 87(2)(b) s vehicle. PO Correale issued § 87(2)(b) only one summons, for not having his driver's license on his person while driving (**Board Review 07**).

§ 87(2)(b) cellphone video (**Board Review 05**), between 01:19 and 01:55, depicts objects hanging from § 87(2)(b) s rearview mirror, including a black, tree-shaped air freshener and a red-and-yellow object hanging alongside it.

PO Correale (**Board Review 11**) and PO Levy (**Board Review 12**) both testified that they pulled over § 87(2)(b) s vehicle after seeing him fail to signal when pulling out of a parking spot, and after seeing objects hanging from his rearview mirror which partially obstructed his view.

§ 87(2)(b) cellphone video corroborates PO Correale and PO Levy's testimony that there were, in fact, objects hanging from § 87(2)(b) s rearview mirror. § 87(2)(g)

Traffic stops are lawful provided that they are predicated on probable cause to believe that the driver committed a traffic violation. *People v. Robinson*, 97 N.Y.2d 341 (2001) (**Board Review 08**). In New York State, it is a traffic violation “to operate a motor vehicle with any object placed or hung in or upon the vehicle, except required or permitted equipment of the vehicle in such a manner as to obstruct or interfere with the view of the operator through the windshield.” *New York State Vehicle and Traffic Law [VTL] § 375(30)* (**Board Review 09**).

§ 87(2)(g)

**Allegation C—Abuse of Authority: Police Officer Cory Levy interfered with § 87(2)(b) use of a recording device.**

§ 87(2)(b) (**Board Review 10**) recounted that he began filming the incident before the officers stopped § 87(2)(b)'s vehicle, by holding his cellphone out the front passenger window. § 87(2)(b) filmed continuously throughout the incident, and did not stop until the officers drove away. PO Levy approached on the passenger side of the vehicle, and pointed his lit flashlight directly at § 87(2)(b)'s cellphone. § 87(2)(b) believed that PO Levy intentionally aimed the flashlight at his cellphone in order to interfere with his ability to film the incident. When the officers approached the vehicle a second time, after PO Correale wrote the summons for § 87(2)(b), PO Levy again approached the passenger side and again shined his flashlight directly at § 87(2)(b)'s phone.

§ 87(2)(b)'s cellphone footage (**Board Review 05**) confirms that PO Levy used his illuminated flashlight almost continuously throughout the incident. The flashlight appears to have been aimed directly at the cellphone for much of the incident; the glare from the flashlight largely obscured PO Levy from view, and generally the flashlight interfered with § 87(2)(b)'s ability to film the incident (see, for example, the footage between 01:54 and 03:54).

PO Levy's BWC footage (**Board Review 03**) confirms that he aimed his flashlight directly at § 87(2)(b)'s cellphone for extended periods during the incident. At the 00:39 mark, PO Levy turns on his flashlight and points it directly at § 87(2)(b)'s cellphone. Between 00:39 and 01:22, PO Levy continuously shines his flashlight into the front passenger seat of the vehicle, where § 87(2)(b) is seated. At 01:23, PO Levy takes a few steps backwards, such that he stands beside the rear passenger door. § 87(2)(b) extends his right arm to hold the cellphone outside the open window, such that it is beside the side mirror and with its lens facing backward toward PO Levy. PO Levy keeps the flashlight beam centered on the cellphone. Within seconds, at 01:29, § 87(2)(b) moves his cellphone a few inches such that it is directly in front of the side mirror. PO Levy tracks the cellphone with the flashlight, so that the flashlight's beam remains centered on the cellphone. At 02:01, § 87(2)(b) moves the cellphone again, such that it no longer obscures the side mirror. PO Levy continues to shine his flashlight directly at § 87(2)(b)'s cellphone, and does not shine it at the unobstructed side mirror.

PO Levy's BWC video (**Board Review 03**) also shows that he aimed his flashlight at § 87(2)(b)'s phone again when he returned to the vehicle. Beginning at 12:14, § 87(2)(b) can be seen still holding his cellphone outside the open passenger window. PO Levy briefly aims his flashlight into the interior cabin when he approaches the vehicle. However, at 12:19, he abruptly shifts the flashlight so that it again shines directly on the area outside the window where § 87(2)(b)'s phone is located. PO Levy keeps the flashlight trained upon that location until 12:29, when he briefly shines the flashlight in § 87(2)(b)'s face as he turns to walk back to his patrol car.

PO Levy initially testified (**Board Review 11**) that he did not recall shining his flashlight directly at § 87(2)(b)'s cellphone, but rather only at the vehicle's side mirror. In addition, PO Levy initially recounted that § 87(2)(b)'s cellphone never obstructed his ability to shine the flashlight beam at the side mirror, and PO Levy did not claim that § 87(2)(b) ever attempted to use his cellphone to block the flashlight beam from reaching the side mirror. PO Levy explained that he aimed his flashlight at the side mirror in order to better illuminate the vehicle's interior. He learned this specific technique in the Police Academy. He believed it was a "more tactical" way to illuminate a vehicle's interior during a traffic stop, as opposed to shining his flashlight at a particular location in the passenger compartment.

Upon reviewing the above-mentioned portions of his own BWC video, PO Levy testified that, in fact, § 87(2)(b) was "following" his flashlight with his cellphone in what PO Levy believed was an attempt to block the flashlight from shining on the side mirror. PO Levy denied that he moved his flashlight in order to keep the beam trained upon § 87(2)(b)'s cellphone, and he denied that he tried to interfere with § 87(2)(b)'s ability to film the incident. PO Levy confirmed that the only reason he used his flashlight in the manner depicted in the BWC video was to implement the

side mirror tactical maneuver.

Neither PO Levy nor PO Correale (**Board Review 12**) testified that he suspected § 87(2)(b) of violating any law at any point during the incident. Both officers confirmed that the sole purpose of the traffic stop was to address § 87(2)(b)'s VTL infractions.

§ 87(2)(g)

Civilians “have a right to lawfully observe and/or record police activity” that occurs “in public places,” including streets. Members of service may curtail this right to record “for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are observing/videotaping.” However, members of service cannot “intentionally block or obstruct cameras or other recording devices” absent a “legitimate law enforcement purpose to do so.” NYPD Patrol Guide Procedure 203-29 (**Board Review 13**).

§ 87(2)(g)

§ 87(2)(g)

**Allegation D—Abuse of Authority: Police Officer Cory Levy took a photograph of § 87(2)(b).**

§ 87(2)(b) alleged that, as PO Correale and PO Levy drove away at the conclusion of the traffic stop, they drew level with § 87(2)(b)'s vehicle and stopped briefly. During this brief stop, PO Levy photographed § 87(2)(b) with a cellphone from his position in the front passenger seat. § 87(2)(b) saw the flash activate on PO Levy's cellphone.

Beginning at approximately 13:28, § 87(2)(b)'s cellphone footage (**Board Review 05**) shows that the officers drove past the passenger side of § 87(2)(b)'s stationary vehicle when they left the scene. However, the footage shows that the officers did not stop briefly beside § 87(2)(b)'s vehicle. In the footage, it is not clear whether PO Levy photographed § 87(2)(b) as PO Levy is not visible in the vehicle as it drives past § 87(2)(b)'s cellphone. However, the footage shows no visible flash emanating from the officers' vehicle. After the officers drove away, § 87(2)(b) exclaimed, “You took a picture, you faggot?”

PO Levy and PO Correale both denied that PO Levy photographed § 87(2)(b) and both denied that PO Levy had his cellphone out as they drove away. Both officers terminated their BWC recordings as they entered their vehicle before driving away, so there was no BWC footage from this portion of the incident.

A request to PSA 3 for any photographs taken on either PO Levy or PO Correale's NYPD-issued cellphones during the incident produced negative results, at least by the time that the PSA 3 ICO conducted the search, sometime around July 31, 2019 (**Board Review 14**).

§ 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)  
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- This is the first and only CCRB complaint in which § 87(2)(b) has been a party (**Board Review 16**).
- PO Levy has been a member of service for four years and named a subject in nine other CCRB complaints and 19 other allegations, none of which was substantiated. § 87(2)(g)
- PO Correale has been a member of service for four years and named a subject in two other CCRB complaints and seven other allegations, none of which was substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- On May 31, 2019, this case was sent to mediation. On July 22, 2019, the case was returned to investigation as the complaint was no longer suitable for mediation.
- On November 18, 2019, a FOIL request was submitted to the NYC Office of the Comptroller for any Notices of Claim regarding this incident (**Board Review 17**). To date, the request is pending.

§ 87(2)(b)

- § 87(2)(b) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Squad No.: #05

Investigator:	_____	<u>Investigator Conor O'Shea</u>	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	<u>Inv. Manager Daniel Giansante</u>	
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	_ Date